

**THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

MICHAEL AND SHELLIE GILMOR,
et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION,
et al.,

Defendants.

Case No. 4:10-cv-00189-ODS

MOTION TO AMEND SCHEDULING ORDER

Plaintiffs respectfully, and out of necessity, move the Court for an Order extending the current January 24, 2011 deadline for Plaintiffs to file their motions to join additional parties and to amend the pleadings to March 31, 2011. In support of this Motion, Plaintiffs state the following:

1. The Court previously set January 15, 2011, as the deadline to file any motions to join additional parties and to amend the pleadings. (Doc. 83). Recently, the Court, *sua sponte*, and in response to Defendant Ocwen Loan Servicing, LLC's and Defendant Countrywide Home Loans, Inc.'s respective motions for extension of time to serve discovery responses, extended the deadline to January 24, 2011. (Doc. 168).

2. In anticipation of the original January 15, 2011 deadline, Plaintiffs, on December 3, 2010, served additional discovery on several of the Assignee Defendants in this case. This discovery was intended in part to enable Plaintiffs to discover the identity of any additional purchasers, owners, holders, assignees, trustees, servicers and master servicers of the allegedly

illegal loans at issue in this case. Plaintiffs need to know the identity of these additional “assignee defendants” before they can properly amend their pleadings and add the additional assignees, etc. as defendants. The discovery responses were initially due the first week of January 2011.

3. Despite the timely service, and in spite of the fact that the existing Assignee Defendants should have already identified all of the “holders” and “holder” information as a part of their initial disclosures and/or prior discovery responses, a number of the Defendants cannot or have not timely responded to Plaintiffs’ discovery requests. For example, Defendant Wendover Financial Services Company recently requested from Plaintiffs an extension of time to January 21, 2011 to respond to the discovery served on it on December 3, 2010. The limited discovery provided by Wendover contained partial payment histories with fields for “Investor Codes” (i.e., the numbers assigned to the holder/owner of the loans), but Wendover has not yet provided the “key” to the code that is needed for Plaintiffs to ascertain the identity of the loan investors. Similarly, United Mortgage CB, LLC recently requested an extension of time to respond to Plaintiffs’ discovery requests and only served its responses on Plaintiffs today. Other defendants have responded by way of objection and have not yet fully answered Plaintiffs’ requests. The IMPAC Defendants are among these Defendants. Surprisingly, in their responses, the IMPAC Defendants again stated that the IMPAC Trusts have been terminated and that IMPAC is therefore unable to provide the requested information. The IMPAC Defendants have taken this position in spite of the Court’s prior directive that IMPAC produce the documents Plaintiffs seek. (Doc. 76 at 4).¹ Also, Defendants Countrywide Home Loans, Inc., Ocwen Loan

¹ The Court stated: “While the trusts may not exist, their termination did not necessarily cause the destruction of all their documents. The Impac Defendants carefully avoid claiming the

Servicing, LLC, and Sovereign Bank, have served their responses, which include various objections. Plaintiffs are in the process of reviewing these responses and need additional time to try and work them out. Additionally, the Court ordered the Preferred Trust Defendants to respond to all of Plaintiffs discovery requests without objection on or before January 31, 2011. (Doc. 128). The Preferred Trust Defendants' responses are therefore due after the current January 24 deadline. Plaintiffs will also need the Preferred Trust Defendants' responses before they can properly file their motion to join additional parties and to amend the pleadings.

4. Plaintiffs unquestionably need full and complete responses to their outstanding discovery requests, including requested documents, before they can make the determinations needed to amend their pleadings and join additional parties. Plaintiffs suggest that March 31, 2011 should be the new deadline. Extending the current deadline through March 31, 2011 makes good sense. If Defendants need additional time (e.g., Ocwen, Countrywide, Wendover, Preferred Trusts), then Plaintiffs are glad to accommodate provided that they are not unfairly prejudiced. The Court has previously extended the deadlines for Ocwen and Countrywide to respond to Plaintiffs requests, and concomitantly extended the deadline for amendment and joinder (See Doc. 168); Plaintiffs now ask the Court to do the same thing again, given the current status of discovery, and extend the deadline to file motions to add parties and to amend the pleadings to enable Plaintiffs to properly file such motions.

5. The discovery responses received thus far already show a number of additional assignees that need to be joined in the case. Plaintiffs suspect that additional assignees will be identified in the discovery that has yet to be provided, and thus, Plaintiffs need more time to

documents do not exist or – more importantly – that they do not have possession or access to them. The Impac Defendants shall produce the documents sought; ...”

obtain the information necessary to enable them to file their motion to join additional parties and to amend the pleadings. Plaintiffs also need additional time to resolve the discovery issues with the IMPAC Defendants.

6. As part of its recent Order denying Defendants' motions to dismiss, the Court directed Plaintiffs to file any motion to join additional class representatives on or before March 31, 2011. (Doc. 175). The Court granted additional time given its recognition that discovery is ongoing and that Plaintiffs are not in a position to join additional representatives until the Defendants provided additional information. The same reasoning applies with the addition of new defendants. Given the incomplete discovery, Plaintiffs are not yet in a position to join additional defendants as parties or to amend the pleadings. Accordingly, Plaintiffs request that the Court amend Plaintiffs' deadline to file motions to join additional parties and to amend the pleadings to March 31, 2011, to coincide with the date the Court has set for Plaintiffs to file a motion to join additional class representatives.

7. The proposed amendment to the current deadline will not adversely affect any of the other scheduling or trial deadlines

8. The proposed amendment to the current deadline is made in good faith and not for the purpose of delay.

WHEREFORE, Plaintiffs respectfully request the Court to enter an Order extending the current deadline for Plaintiffs to file their motions to join additional parties and to amend the pleadings to March 31, 2011, and for such other and further relief the Court deems just and proper.

Dated: January 18, 2011

Respectfully submitted,

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& VAUGHAN, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 18th day of January 2011, I electronically filed the above and foregoing document with the Clerk of Court of the Western District of Missouri using the Court's ECF system, which will send notification of said filing to all counsel of record who are ECF participants.

/s/ Bruce V. Nguyen